

REMARKS

Claims 1 to 25 are pending in this application. In the Office Action, the following objections and rejections are made:

- (1) claim 2 and 11 to 15 are objected to;
- (2) claims 7 and 9 are rejected under 35 U.S.C. § 112, second paragraph; and
- (3) claims 1 to 25 are rejected under 35 U.S.C. § 103(a) over US-B1-6,387,059 (*Marchitto* reference) in view of US-B1-6,277,070 (*Kane* reference).

Applicant is herein amending claims 1, 2, and 11 to 15.

Applicant is herein amending claim 1 to clarify in the preamble that the invention is directed to a method of treating skin health of a subject. Support for the amendment may be found, *inter alia*, on page 2, lines 25 to 30. Applicant is herein amending claims 2 and 11 to 15 to correct typographical errors. Applicant submits that the amendments to the claims do not introduce new matter and are fully supported by the specification and claims, as originally filed.

Objection to the Claims

In the Office Action, claims 2 and 11 to 15 are objected to because of certain informalities (use of “a” in claim 2; and use of “is compared” in claims 11 to 15). Applicant is herein amending these claims to correct these typographical errors, rendering moot the objections to the claims.

Rejection under 35 U.S.C. § 112, second paragraph

In the Office Action, claims 7 and 9 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for using the term “like” in the expression “insulin-like growth factor” recited in each claim as an analyte. Applicant respectfully traverses the rejection because the whole expression, *i.e.*, “insulin-like growth factor,” is definite and is

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known in the art to describe polypeptides with considerable sequence similarity to insulin, which are capable of eliciting the same biological responses, including mitogenesis, in cell culture. See definition provided from *On-line Medical Dictionary*. Thus, the expression "insulin-like growth factor" is definite and clear to one of skill in the art. Accordingly, applicant respectfully submits that claims 7 and 9 are definite and therefore requests withdrawal of the rejection of the claims under 35 U.S.C. § 112, second paragraph.

Rejection under 35 U.S.C. § 103(a)


In the Office Action, claims 1 to 25 are rejected under 35 U.S.C. § 103(a) over US-B1-6,387,059 (*Marchitto* reference) in view of US-B1-6,277,070 (*Kane* reference). Applicants respectfully traverse the rejection because neither of the references, individually or in combination, discloses, teaches or suggests a method of treating the skin health of a subject.

Applicant submits that *Marchitto* fails to disclose, teach or suggest at least two of the required elements of applicant's claimed method, as defined by independent claim 1, namely:

- (1) a method for treating skin health of a subject; and
- (2) a method where a skin care product is applied to the subject to alter the amount of analyte in the skin of the subject.

The Office Action acknowledges that the application of a skin care product is not disclosed, taught or suggested by the *Marchitto* reference.

Marchitto discloses a device to remove and analyze interstitial fluid for approximating concentrations of analytes in other bodily fluids, such as blood (column 14, lines 40-column 15). Applicant submits the measurement that the *Marchitto* reference makes is not one of the health of the skin. *Marchitto* does not, in any way, disclose, teach or suggest that this level of analyte in the interstitial fluid extracted through the skin of a subject is indicative of skin health of the subject. As applicant explained in his application, certain endogenous substances present in the skin tissues (such as vitamin C) are at a different concentration in the interstitial fluid than in serum (page 2, lines 15-21). Applicant's



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invention is directed to a method of extracting and analyzing the resident interstitial fluid rather than transudate (for example, glucose) transported from another bodily fluid into the interstitial fluid. Furthermore, applicant's claimed invention is directed to a method of treating the health of the skin organ not the condition of some other organ within the body of the subject.

In the Office Action, the *Marchitto* reference is combined with the *Kane* reference to supply the elements missing from the *Marchitto* reference. While not addressing or conceding the appropriateness of combining the teachings of *Marchitto* and *Kane*, applicant submits that the combination of *Marchitto* and *Kane* does not render claims 1 to 25 obvious. Specifically, *Kane* does not supply all of the elements missing from *Marchitto*, i.e., the failure to disclose, teach or suggest a method of treating skin health. Contrary to the Office Action, *Kane* does not disclose, teach or suggest vitamins as an analyte but rather only as a treatment to alter the amount of another substance (analyte) in the individual (See Figure 2, column 2, lines 4 to 7; column 5, lines 10 to 67 and claim 14).

Because the combination of *Marchitto* and *Kane* does not teach as a whole all of the elements of applicant's claimed invention, it is respectfully submitted that a proper *prima facie* obvious rejection has not been established with respect to claims 1 to 25. *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1983). Accordingly, applicant respectfully requests withdrawal of the rejection of the claims under 35 U.S.C. § 103(a).

Conclusions

Applicant requests:

- (1) entry of the amendment; and
- (2) reconsideration and withdrawal of the rejections of and objections to the claims; and
- (3) allowance of claims 1 to 25.

If the Examiner is of a contrary view, the Examiner is requested to contact the undersigned attorney at (215) 557-3861.

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Attached hereto is a marked-up version of the changes made to the specification and the claims by the current amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE**In the claims:**

Please rewrite the claims as follows:

1. (amended) A method of treating the skin **health** of a subject, said method comprising the steps of:
 - (a) accessing a sample of interstitial fluid from the skin of said subject;
 - (b) measuring the amount of a skin analyte in said sample; and
 - (c) applying a skin care product to said subject to alter the amount of said skin analyte in the skin of said subject.
2. (amended) A method of claim 1, wherein said method comprises creating **[a] an** opening in the stratum corneum of the skin of said patient and accessing said sample through said opening.
11. (amended) A method of claim 1, wherein said method further comprises comparing the amount of said analyte **[is compared]** to a reference standard.
12. (amended) A method of claim 2, wherein said method further comprises comparing the amount of said analyte **[is compared]** to a reference standard.
13. (amended) A method of claim 4, wherein said method further comprises comparing the amount of said analyte **[is compared]** to a reference standard.
14. (amended) A method of claim 6, wherein said method further comprises comparing the amount of said analyte **[is compared]** to a reference standard.
15. (amended) A method of claim 10, wherein said method further comprises comparing the amount of said analyte **[is compared]** to a reference standard.

